

In The Matter Of:

*Estate of Marissa Rose Fishman v.
Richard Longwell, et/al*

*Vincent J. Rizzo
January 30, 2006*

*B&R Services for Professionals, Inc.
235 S. 13th Street
Philadelphia, PA 19107
(215) 546-7400
FAX (215) 985-0169*

Original File 013006p1.txt, Pages 1-125

Word Index included with this Min-U-Script®

Vincent J. Rizzo
January 30, 2006

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Page 5

Page 7

(1) (It is stipulated and agreed by and
(2) between counsel that the sealing, filing and
(3) certification of the within deposition be
(4) waived; and that all objections, except as
(5) to the form of the question, be reserved
(6) until the time of trial.)

(7) -- --
(8) VINCENT RIZZO, having been duly sworn
(9) was examined and testified as follows:

(10) BY MR. CASEY:

(11) Q. Good morning, sir.

(12) A. Good morning. How are you?

(13) Q. I'm doing fine. Thank you.

(14) A. Good.

(15) Q. My name is Matt Casey, and I represent the
(16) estate of the little girl who drowned in the
(17) accident for which you're here today.

(18) You understand that you're here to
(19) provide a deposition in a case relating to a
(20) drowning accident that occurred at a home where
(21) your company had some workers performing work in
(22) August of 2002.

(23) A. That's correct.
(24)

(1) that. But if you answer my question, I'm going to
(2) assume that you understood it, and you should know
(3) and remember that your testimony today is under
(4) oath, and has the same effect as it would if we
(5) were actually in a courthouse with a judge.

(6) Do you understand that?

(7) A. Yes, sir.

(8) Q. State your full name for the court reporter?

(9) A. Sure. My name is Vincent J. Rizzo.

(10) Q. Mr. Rizzo, what is the name of the business
(11) entity that was working at the Coachman Road
(12) address where this accident occurred on the day of
(13) the accident?

(14) A. Ashland Construction, Incorporated. We're a
(15) masonry company, a full line of masonry.

(16) Q. Were you physically present on the premises on
(17) August 30, 2002?

(18) A. Yes.

(19) Q. For what purpose were you and your business at
(20) the Coachman Road address?

(21) A. Outside of the house, the Longwells, they were
(22) inquiring, and actually -- we were actually doing a
(23) patio for them outside of the house.

(24) Q. On what date were you contacted about doing

Page 6

Page 8

(1) Q. And you understand that that's the matter for
(2) which you're here today?

(3) A. Yes.

(4) Q. Have you ever had your deposition taken
(5) before?

(6) A. The last time that we did this. So...

(7) Q. Right. You reminded me that you have given
(8) testimony in this case before, and what I want to
(9) make sure that you understand is that there's a
(10) court reporter in this conference room with us
(11) taking a verbatim transcript of my questions and
(12) your answers, and for that reason, it's important
(13) that you keep your voice up, and that you answer my
(14) questions with words as opposed to with gestures --

(15) A. Uh-uh.

(16) Q. -- like you just did.

(17) The court reporter is not able to
(18) transcribe gestures, and for that reason, it's
(19) important, for example, that instead of nodding
(20) your head, you say yes and instead of shaking your
(21) head you say no. Do you understand that?

(22) A. Yes, sir.

(23) Q. If for any reason you don't understand my
(24) question, please ask me to restate it. I will do

(1) work at the Coachman Road address?

(2) A. Gosh, I'd say prior, about a month to a month
(3) and a half ago.

(4) Q. Had you ever done any work at that address
(5) before?

(6) A. Oh, yes. Many a times.

(7) Q. Tell me about that.

(8) A. As far as every bit of work, I couldn't go
(9) back to the beginning and tell you every little bit
(10) of work I've done there. I've been working for
(11) Mrs. and Mrs. Longwell, gosh, I'd say for quite
(12) some time now.

(13) Q. Can you summarize for me the work that you've
(14) done for them at that Coachman Road address, prior
(15) to August of 2002?

(16) A. Prior -- well within this job that would
(17) consist of the patio and of the pool, there was
(18) walls that went to the pool, okay, that were
(19) erected, probably I'd say about a month prior to
(20) the -- to this incident.

(21) Q. So that would be in approximately July of
(22) 2002?

(23) A. Exactly. It was in the summer.

(24) Q. Before that what kind of work did you do at

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Vincent J. R
January 30, 2

Page 9

Page

[1] the Coachman Road address for the Longwells?
[2] **A.** Gosh, I did tile work for them outside of the
[3] house. I did a barbecue pit for them. Enclosed
[4] their air conditioner units with four well block.
[5] Gosh, a bunch and odds and ends, little stuff there
[6] as far as that.
[7] **Q.** Did you participate at all in the original
[8] construction of that home?
[9] **A.** Not in the original construction.
[10] **Q.** At what other locations besides the Coachman
[11] Road address have you done work for the Longwells?
[12] **A.** Actually I did a little bit of work down on
[13] Smiths Bridge Road for the actual daughter of Mr.
[14] Longwell.
[15] **Q.** Which daughter?
[16] **A.** Which would be Rochelle.
[17] **Q.** And what address is that?
[18] **A.** I don't know the address. It's right on
[19] Smiths Bridge Road.
[20] **Q.** Smiths Bridge Road?
[21] **A.** Yes.
[22] **Q.** Is that in Wilmington?
[23] **A.** Yes.
[24] **Q.** When did you do work for Rochelle Fishman at

[1] business?
[2] **Q.** Anything that you've done for them, either
[3] personal or business related?
[4] **A.** A few things at Air Base Carpet Mart.
[5] **Q.** What have you done at Air Base Carpet Mart?
[6] **A.** I mean I've done a few -- quite a bit of
[7] things. Repaired a wall that a truck has hit.
[8] **MR. MINTZER:** I'm sorry. I couldn't
[9] hear that.
[10] **MR. LONDON:** Repaired a wall that a
[11] truck has hit.
[12] **MR. MINTZER:** There are multiple
[13] addresses for Air Base Carpet Mart, so it
[14] would be helpful to talk about which store.
[15] **MR. CASEY:** He hadn't gotten it out yet.
[16] I'll ask him which address.
[17] **BY MR. CASEY:**
[18] **Q.** Which address are you talking about?
[19] **A.** The New Castle store.
[20] **Q.** Continue.
[21] **A.** Actually some concrete work on the inside
[22] floor. A little bit of pointing up here and there.
[23] **Q.** And this is all at the New Castle store?
[24] **A.** Uh-uh.

Page 10

Page 12

[1] the Smith Bridge Road address?
[2] **A.** Gosh, that's probably about -- I'd say
[3] probably a couple years, about two, three years
[4] ago. It was small, a small little tile job inside
[5] the bathroom.
[6] **Q.** Was that before or after the August 30 --
[7] **A.** That was before.
[8] **Q.** For the same reason I was telling you earlier,
[9] you have to let me finish the question even though
[10] you'll probably be able to anticipate what my
[11] question will be. Just let me get it out and then
[12] provide the answer. Will you do that?
[13] **A.** Yes, sir.
[14] **Q.** It will be difficult, but we'll get through
[15] it. I'll have to restate the question.
[16] Was the work that you did for Rochelle
[17] Fishman at her address that you told me about, the
[18] tile work, done before or after August 30, 2002?
[19] **A.** It was done before.
[20] **Q.** What other work have you done for the Longwell
[21] family besides the tile work at Rochelle Fishman's
[22] place and the work that you've told me about
[23] already at the Coachman Road address?
[24] **A.** Is this relating to their personal or

[1] **Q.** Yes?
[2] **A.** Yes. Yes, sir.
[3] **Q.** What else besides that work at the New Castle
[4] Air Base store, and the work that you told me about
[5] that you've done at the Coachman Road address, and
[6] the tile work done at Rochelle Fishman's place?
[7] **A.** There was a little bit of pointing up I had to
[8] do up in Kensington which was probably not even a
[9] half a day job up there.
[10] **Q.** Kensington where?
[11] **A.** Kensington in Lomax.
[12] **Q.** In Philadelphia?
[13] **A.** Philadelphia.
[14] **Q.** You're talking about the Lomax store in the
[15] Kensington part of Philadelphia?
[16] **A.** Correct.
[17] **Q.** When did you do work there?
[18] **A.** Oh, gosh, I guess it was probably about -- I'd
[19] say probably about a year ago, a little more than a
[20] year.
[21] **Q.** How many times did you do work for the
[22] Longwells at the Kensington location?
[23] **MR. MINTZER:** Objection to the form. He
[24] said he was doing it for Air Base.

Vincent J. Rizzo
January 30, 2006

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Page 13

[1] **MR. CASEY:** Okay. I think he told me he
[2] did it for the Longwells in a business
[3] capacity. But I don't want to get bogged
[4] down in this.

[5] **MR. MINTZER:** Objection to the form.
[6] They work in a corporate format.

[7] **MR. CASEY:** We're in Delaware. Don't
[8] worry about it. That's all been done.

[9] **BY MR. CASEY:**

[10] **Q.** How many times did you do work at the Lomax
[11] store?

[12] **A.** I'd say probably about four or five times at
[13] the most.

[14] **Q.** When was the first time that you did work
[15] there?

[16] **A.** Gosh, I'd say prior, probably about ten years
[17] ago.

[18] **Q.** What other stores besides the New Castle store
[19] and the Lomax store in Philadelphia have you done
[20] work at?

[21] **A.** There was a little bit of stuff done at
[22] Central Carpet. That was up in New York. It was a
[23] small parapet wall that needed to be repaired.

[24] **Q.** A small what?

Page 15

[1] to be done at the Coachman Road address in August
[2] of 2002?

[3] **A.** I'm sorry, Matt. Can you repeat that, please?

[4] **Q.** How is it that you remember that Mr. Manger
[5] was the one who contacted you about the patio work
[6] at the Coachman Road address?

[7] **A.** He's -- he's the gentleman I've always spoke
[8] to, anything that would concern anything with Air
[9] Base or the Longwells.

[10] **Q.** Out of what office did Mr. Manger work when he
[11] would typically contact you about jobs to be done?

[12] **MR. MINTZER:** Objection to the form.

[13] **THE WITNESS:** I mean it could actually
[14] be -- at that specific time I believe he was
[15] up at the Longwells house when he contacted
[16] me.

[17] **BY MR. CASEY:**

[18] **Q.** If you were looking for Mr. Manger, where
[19] would you call?

[20] **A.** I'd have to get on the phone to him.

[21] **Q.** I know but where would you call?

[22] **A.** His cell phone would be the best shot for me
[23] to get him.

[24] **Q.** Would you expect to find him at the New Castle

Page 14

[1] **A.** Parapet wall on top of the building.

[2] **Q.** For the patio work that brought you to the
[3] Coachman Road address in August of 2002, who
[4] contacted you to inquire about your availability to
[5] do that work?

[6] **A.** Sure. Actually their construction -- I guess
[7] their construction foreman, which would be John
[8] Manger.

[9] **Q.** Whose construction foreman?

[10] **A.** Air Base.

[11] **Q.** Can you spell his last name?

[12] **A.** M-A-N-G-E-R.

[13] **Q.** M-A-N-G-E-R?

[14] **A.** That's correct, sir.

[15] **Q.** Is Mr. Manger typically the person who would
[16] contact you about a job for either the Longwells
[17] individually or for Air Base related work?

[18] **A.** Yes, sir.

[19] **Q.** Did Mr. Manger call you at your office?

[20] **A.** He would either call me at my office or call
[21] me on my cell or call my house. He would have all
[22] numbers.

[23] **Q.** How is it that you remember that Mr. Manger
[24] was the person who called you about the patio work

Page 16

[1] address or some other address?

[2] **MR. MINTZER:** Objection to the form.

[3] **THE WITNESS:** It would be a very good
[4] question. Sometimes. Sometimes not.

[5] **BY MR. CASEY:**

[6] **Q.** What address would you look to first to find
[7] him?

[8] **A.** I'd have to say New Castle. The New Castle
[9] store.

[10] **Q.** Have you ever been to the New Castle store
[11] yourself, sir?

[12] **A.** Yes. Actually I did work there, which I just
[13] did say.

[14] **Q.** And have you seen Mr. Manger at the New Castle
[15] store?

[16] **A.** I saw him there, yes, a few times.

[17] **Q.** Given that this accident happened on August
[18] 30, 2002, can you give me any idea when the work
[19] started on the patio job?

[20] **A.** The actual patio job?

[21] **Q.** Yes.

[22] **A.** I would have to say -- I would probably say --
[23] probably about two weeks prior, before this.

[24] **Q.** So approximately, not pinning you down on the

Page 17

(1) exact date, but approximately August 15, 2002?
(2) A. I'd say roughly, within a week to a week and a
(3) half, because there had to be a lot of prep work
(4) done before I could get in there to do what I
(5) needed to do.
(6) Q. Did you sign any documents prior to beginning
(7) work?
(8) A. No.
(9) Q. Did you complete any scope of work documents
(10) or anything like that before beginning work?
(11) A. No. We never -- we never needed actually
(12) stuff. Whatever they needed I completed the job,
(13) thorough, okay. There was never issues as far as.
(14) Q. You typically wouldn't have any paperwork
(15) before you would do a job, if I'm understanding you
(16) correctly; you would do a job, and then, I assume,
(17) submit an invoice?
(18) A. That's correct.
(19) Q. To whom would you submit the invoices?
(20) A. Some would go to -- well they would go to Air
(21) Base Carpet.
(22) Q. Even for the work done at the Longwells
(23) Coachman Road address?
(24) A. Correct.

Page 18

(1) Q. You would submit invoices to Air Base, and, I
(2) assume, to Mr. Manger?
(3) A. Correct. Correct. Mr. Manger would usually
(4) get or occasionally would get the invoice and he
(5) would present it to where it needed to go to.
(6) Q. Would you typically deal with anyone other
(7) than Mr. Manger at Air Base relating to either the
(8) work that you were supposed to be doing or the
(9) follow-up on getting paid?
(10) A. As far as on the work, it would be Mr. Manger,
(11) and Mr. Manger would usually handle everything
(12) pretty much. Occasionally when Mr. Manger wasn't
(13) there, usually Arnold, I would go up and talk to
(14) Arnold.
(15) Q. Arnold Frye?
(16) A. Yes.
(17) Q. What is his job at Air Base?
(18) A. He's actually their controller from what I
(19) understand.
(20) Q. Before you started work on the patio job in
(21) August of 2002, did you have to go out to the
(22) residence to see it and to talk to somebody about
(23) what you were going to do?
(24) A. Absolutely.

Page 18

(1) Q. Yes?
(2) A. Yes.
(3) Q. When do you expect that you did that?
(4) A. Oh, gosh, I'd probably say a month, month and
(5) a half, prior, before August, before the work
(6) started.
(7) Q. Did you meet with someone at the Coachman Road
(8) address?
(9) A. It would be John Manger.
(10) Q. Was anyone with you?
(11) A. No. When I first met John, it was myself.
(12) Q. So it would have been yourself and John Manger
(13) at the Coachman Road address about a month or so
(14) before this accident?
(15) A. Correct.
(16) Q. And what did he tell you needed to be done?
(17) A. Well there was discussion that they was going
(18) to replace all the windows around the enclosed
(19) pool, and then with that they were going to
(20) probably -- before that the whole pool area was
(21) enclosed with glass.
(22) So they were eliminating some of the
(23) glass, coming up with a knee wall and setting glass
(24) on top of the knee wall, and then from there, that

Page 20

(1) was pretty much that phase of the job, of the pool
(2) area.
(3) Q. So prior to your beginning work, was the pool
(4) enclosed?
(5) A. Yes.
(6) Q. And can you just tell me -- I just don't
(7) understand what --
(8) A. Absolutely.
(9) Q. You were changing the enclosure from what to
(10) what?
(11) A. This pool -- this area of the pool was all
(12) surrounded by glass. The glass started getting
(13) bad, started leaking. So then what they wanted to
(14) do was to replace the glass but not have the glass
(15) go from the ground all the way up. They wanted to
(16) come up with a knee wall, I would say preferably
(17) about four foot high, and the glass unit would sit
(18) on top of the knee wall.
(19) Q. I see. What else besides modifying the
(20) enclosure on the pool were you expecting to be
(21) doing on that job in August of 2002?
(22) A. Well, actually, the first phase of that job
(23) was that, was the wall so they could get the glass
(24) people in and get that pool enclosed. After that

Vincent J. Rizzo
January 30, 2006

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Page 21

Page 23

[1] then it was the patio area. And --
[2] Q. I'm sorry. What were you going to be doing at
[3] the patio?
[4] A. The patio we were installing pavers, the wrap
[5] around -- the inner part, there was like an L
[6] between the house and the enclosed pool area and we
[7] were covering that section with pavers on the
[8] outside of the house.
[9] Q. Can you spell it, pavers?
[10] A. P-A-V-E-R-S.
[11] Q. And in laymen's terms just describe what you
[12] mean by pavers?
[13] A. It's actually -- they come in all different
[14] sizes, four by four, six by six, six by nine. It's
[15] actually a concrete paver. It's actually like a
[16] walking stone, like a cobblestone.
[17] Q. What were you doing first? Were you going to
[18] fix the enclosure on the pool first and then do the
[19] patio work?
[20] A. The pool was completely done.
[21] Q. That was done first?
[22] A. That whole phase was done. There was nothing
[23] else to be done as far as that.
[24] Q. As of August 30, 2002 the modifications to the

[1] A. If I can locate them. It's been so long.
[2] Q. But have you looked back since you became
[3] aware that there was a lawsuit to see which dates
[4] you were working?
[5] A. I have not. If anything would happen as far
[6] as on my records, I looked. I'm having a heck of a
[7] time finding them. If Air Base could find them,
[8] because I'm sure they have them because I had to
[9] present them issues with the invoices.
[10] Q. And they may, but I just wanted to be specific
[11] about dates.
[12] A. That's fine. As far as the dates, I wish I
[13] could be more helpful to you, as far as the actual
[14] dates, but, unfortunately, I do not remember date
[15] for date. That's a very bad thing with me as far
[16] as paperwork and all that.
[17] Q. I understand. About two weeks or so before
[18] this accident the pool enclosure work was done?
[19] A. It was completed every bit of two to three
[20] weeks before this patio was even started, in full.
[21] It was completed.
[22] Q. And when you completed it, then you moved to
[23] start the patio work?
[24] A. That's correct.

Page 22

Page 24

[1] pool enclosure had already been completed?
[2] A. It had been completed.
[3] Q. How long did it take you to do that?
[4] A. I would probably say -- I'd say probably about
[5] a week, week and a half. Realistic probably about
[6] a week and a half.
[7] Q. So if you started work -- I know I wasn't
[8] being specific necessarily about the exact date,
[9] but if you started approximately August 15, that
[10] would take you up to about August 25 or so, about
[11] five days before this accident that you completed
[12] the pool enclosure work?
[13] A. Right. This was prior, before -- this was not
[14] within a week's time that this happened, within
[15] each other. This pool area was done probably about
[16] two or three weeks before the pavers were even
[17] started.
[18] Q. So as of about August 15 then, if the accident
[19] happened on August 30 -- by the way you have
[20] invoices for this stuff, right?
[21] A. Gosh, man I got to check. I'm sure I do. I
[22] have to.
[23] Q. We can pin down the exact dates that you
[24] worked?

[1] Q. And where in relation to the pool is the
[2] patio?
[3] A. It is on the outside of the house. Again, if
[4] I could draw it for you, I could show you better.
[5] If you can picture an L, okay, the
[6] outside of the L, okay, was where the work was
[7] done.
[8] Q. Why don't we --
[9] A. I --
[10] Q. Sir, I have some photographs of the home. Did
[11] you take any before you started work?
[12] A. No, sir.
[13] Q. Is that something you would typically do?
[14] A. No. No.
[15] Q. Did you take any photographs at any time
[16] either before this work that you did in August of
[17] 2002 or after it?
[18] A. No, sir.
[19] Q. So Ashland Construction doesn't have any
[20] photographs of the subject premises or the work
[21] area?
[22] A. Absolutely.
[23] Q. This is a diagram that was produced in
[24] discovery. This was produced by the Air Base

Vincent J. Rizzo
January 30, 2006

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Page 29

(1) that can use some work if we had some for him.
(2) **Q.** Did Mr. Ortiz fill out any paperwork when he
(3) first started working for you pursuant to putting
(4) him on the books?
(5) **A.** Yes. He filled out a W 9.
(6) **Q.** Do you have those W 9's?
(7) **A.** I'd have to check. I don't even know, Matt,
(8) at this point.
(9) **Q.** When was the last time that you saw Mr. Ortiz?
(10) **A.** Actually he went back to Mexico for awhile,
(11) and then he came back, and, actually, I guess
(12) probably about a month ago. He's been working on
(13) and off a little bit with me.
(14) **Q.** He's been working on and off with you?
(15) **A.** Correct.
(16) **Q.** Where does he live; in the area?
(17) **A.** His actual address I don't know offhand. He's
(18) down in the Wilmington area.
(19) **Q.** Do you know his phone number?
(20) **A.** I know his brother-in-law's phone number.
(21) **Q.** Mr. Rizzo, I'm interested in taking his
(22) deposition?
(23) **A.** That's not a problem.
(24) **Q.** Can you help me locate him?

Page 30

(1) **A.** Sure.
(2) **Q.** And secure his cooperation to take a
(3) deposition?
(4) **A.** Sure. Sure. That's not a problem.
(5) **MR. CASEY:** I can do this through your
(6) counsel.
(7) **MR. LONDON:** We can do that. I just
(8) became aware that he's been back in the
(9) area. You're going to need an interpreter
(10) because he doesn't speak English very well.
(11) **MR. CASEY:** Okay. I can do that.
(12) Should I work through you, Roger?
(13) **MR. LONDON:** Yes.
(14) **BY MR. CASEY:**
(15) **Q.** Do you know if he has any immediate plans to
(16) go back to Mexico?
(17) **A.** At this point, Matt, I'm not sure. I mean
(18) it's not been said to me. So I don't know when he
(19) plans on going back or what's going to be going on
(20) with him.
(21) **Q.** Is he now on the books as an employee of yours
(22) today?
(23) **A.** He works with me -- not all the time.
(24) Occasionally, you know. So that's, you know,

Page 31

(1) that's how it's been going with him.
(2) **Q.** Is he on the books?
(3) **A.** Yes. Yes.
(4) **Q.** And you pay worker's compensation insurance
(5) for him?
(6) **A.** Yes. I pay workmen's compensation on all my
(7) employees.
(8) **Q.** What I'm saying is, there's a record of him
(9) being employed by you today?
(10) **A.** Yes.
(11) **Q.** How many employees do you have?
(12) **A.** I just carry a couple employees. About -- I'd
(13) say about two to three employees at the most.
(14) **Q.** Were you aware when you were doing the work at
(15) the Coachman Road address in August of 2002 that
(16) there were young children staying at the premises?
(17) **A.** I -- when I was there, I mean I saw Rochelle
(18) there, and I saw a couple of the older children,
(19) okay. But that was the extent -- I mean -- my work
(20) consisted of outside. I had no business with what
(21) was going on inside with the family or inside the
(22) house or anything.
(23) **Q.** My question though was -- I think you
(24) answered. You said that you were aware that there

Page 32

(1) were some older children?
(2) **A.** Correct.
(3) **Q.** Were you aware that there was this infant,
(4) Marissa Fishman, staying at the premises?
(5) **A.** I had not seen her.
(6) **Q.** So you were not aware --
(7) **A.** Exactly.
(8) **Q.** -- as of August 30, 2002, that there was a
(9) little baby staying at the place?
(10) **A.** That's correct.
(11) **Q.** Did you speak to anybody prior to August 30,
(12) 2002 about any special precautions that you and Mr.
(13) Ortiz needed to take in light of the fact that
(14) there were young children on the premises?
(15) **A.** Can you repeat that?
(16) **Q.** Sure. Did you speak to anybody, either living
(17) at that Coachman Road address or Mr. Manger or
(18) anybody about any precautions that you and Mr.
(19) Ortiz needed to take in doing your work relating to
(20) the presence of young children at that address?
(21) **MR. MINTZER:** Objection to the form.
(22) **THE WITNESS:** No. Positively -- no.
(23) There was nothing ever said that watch the
(24) children, or anything, or anything of that

Page 33

Page

(1) nature. I mean, again, as I can say our job
(2) consisted of outside and that's where we
(3) were.

(4) **BY MR. CASEY:**

(5) **Q.** But the job, sir, took you from the patio into
(6) the pool area, correct?

(7) **A.** No. No. Everything with that pool area was
(8) done. There was no business for me to go in there.
(9) Okay. My job consisted of outside of that pool
(10) area and that house.

(11) **Q.** Were you keeping any equipment or anything
(12) relating to your patio work in the enclosed area of
(13) the pool on August 30, 2002?

(14) **A.** No, sir.

(15) **Q.** Have you looked at the police report?

(16) **A.** No, sir. I have not.

(17) **Q.** Are you aware that there are allegations in
(18) this case that a sliding glass door was left open
(19) either by you or your worker?

(20) **A.** I have not seen it, as far as the police
(21) report, but as far as the truth of the matter is
(22) there was no door that was left open by any of us
(23) because our business was on the outside. We had
(24) nothing to do on the inside.

(1) **MR. CASEY:** Sure.

(2) **BY MR. CASEY:**

(3) **Q.** Do you see that door in any of the other
(4) photographs? Take a look through them.

(5) **A.** This would be it here. There was another
(6) sliding door that came off the master bedroom,
(7) here. That's where this slider is at. This slider
(8) here is off the master bedroom. This is the
(9) outside area that I was working, out here.

(10) **Q.** I'll draw an arrow to this door, and the Bates
(11) number is GORB 25.

(12) For the record on the last exhibit,
(13) Rizzo-2, the arrow obviously speaks for itself, but
(14) on the page there are two photographs. We're
(15) referring to the photograph on the lower half of
(16) the page that is marked with the arrow.

(17) On this exhibit we're on the top half of
(18) the page, and I've drawn an arrow too, and tell me
(19) if I'm correct, to the sliding glass door that goes
(20) from the master bedroom into the pool area, and
(21) it's directly opposite the sliding glass door that
(22) you've drawn an arrow to in Rizzo-2; is that right?

(23) **A.** That's correct.

(24) **Q.** This sliding glass door is directly opposite,

Page 34

Page 36

(1) **Q.** I just want to ask you a general question.
(2) Are you aware of the fact that there is an
(3) allegation made against you and your worker that a
(4) door was left open?

(5) **A.** Oh, yes, from everything that -- right.

(6) **Q.** Can you point me to the door that relates to
(7) that allegation, if I show you the photographs, the
(8) door through which, at least as far as you
(9) understand it, this child went through?

(10) **A.** The only possible door that I could see where
(11) it would be would be this door here, from what
(12) they're saying.

(13) **Q.** Let me just make a record. Hold on a second.
(14) You're referring to GORB 23 Bates number. I'll
(15) mark this as Rizzo-2.

(16) (Whereupon Exhibit Rizzo-2 was marked
(17) for identification.)

(18) **BY MR. CASEY:**

(19) **Q.** Can you draw an arrow to the door that you're
(20) talking about, sir?

(21) **A.** (Witness complies.)

(22) **Q.** Just initial it for me.

(23) **A.** (Witness complies.)

(24) **MR. MINTZER:** Can I just see the arrow?

(1) in Rizzo-3, is directly opposite the sliding glass
(2) door that you marked with an arrow in Rizzo-2?

(3) **A.** Repeat the question, Matt.

(4) (Whereupon Exhibit Rizzo-3 was marked
(5) for identification.)

(6) **BY MR. CASEY:**

(7) **Q.** Sure. Looking at Rizzo-3, I've drawn an arrow
(8) to a sliding glass door, correct?

(9) **A.** Correct.

(10) **Q.** That sliding glass door is directly opposite
(11) the sliding glass door to which you've drawn an
(12) arrow in Rizzo-2, correct?

(13) **A.** Correct.

(14) **Q.** And in the foreground of the photograph in
(15) Rizzo-3 we can actually see the sliding glass door
(16) that comes off the patio, correct?

(17) **A.** Correct.

(18) **Q.** Using Rizzo-2, can you point out to me where
(19) it was in relation to that sliding glass door that
(20) you guys were doing your patio work?

(21) **A.** This is it here, outside, just the outside
(22) area.

(23) **Q.** Just draw a circle there. Okay?

(24) **A.** (Witness complies.)

Vincent J. Rizzo
January 30, 2006

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Page 37

Page 39

[1] Q. Did you and Mr. Ortiz have to bring tables and
[2] chairs from any location into the pool area on the
[3] day of the accident?
[4] A. Would you like me to tell the whole story?
[5] Q. Yes.
[6] A. Prior to when we got there -- okay, our work
[7] consisted of on the outside, doing the pavers. We
[8] got there, I would say we were there for probably,
[9] I'd say for about -- I'd say probably about half an
[10] hour, forty-five minutes, maybe an hour, when we
[11] got there. Mrs. Longwell came outside, okay, and
[12] there was actually a white table, and I believe
[13] there was a couple chairs that were out there. I
[14] can't quite remember about the chairs too good, but
[15] she asked me if we could clean up the table and the
[16] chairs and bring them in, you know.
[17] I said -- before we even did that, I
[18] walked in with Mrs. Longwell, inside the house, I
[19] followed her down into the pool area, and she said
[20] this is where I would like you to set the table at.
[21] Okay.
[22] I proceeded to walk out of the house.
[23] She was in front of me. Walked out of the house,
[24] walked back out the outside door, okay, and then

[11] yet, and I looked up, and I heard Rochelle up on
[12] the top screaming. Okay.
[13] And then, gosh, it was so fast
[14] everything that went on, then I seen her come
[15] running through the area where I was setting the
[16] table down and running to the pool, and I seen her
[17] grabbing the baby out of the pool.
[18] Q. Okay. What time of day did you have the
[19] conversation with Mrs. Longwell where she asked you
[20] to clean the tables or the chairs and the table and
[21] bring them into the pool area. About what time?
[12] A. It was the morning, probably about nine or ten
[13] o'clock.
[14] Q. By the way, have you made any personal notes
[15] or written this down anywhere, regarding your
[16] description of events?
[17] A. No. I mean it's just -- it's cut and dry
[18] exactly what happened.
[19] Q. I'm asking on the day of the accident did you
[20] sit -- did anybody tell you sit down and write down
[21] what happened?
[22] A. No. Positively not.
[23] Q. At no time since August 30, 2002 have you
[24] actually put pen to paper and wrote down a

Page 38

Page 40

[1] continued with my work. I'd say roughly for about
[2] another half hour, okay. I guess half an hour,
[3] forty-five minute, and then got to cleaning off the
[4] table.
[5] Okay. We cleaned the table off. We
[6] scrubbed it down with Ajax and ammonia. I believe
[7] there was a couple chairs also that we scrubbed
[8] down also.
[9] And after everything was done, okay, and
[10] ready to go back in, then we proceeded to walk --
[11] we opened up the outside door of the house, we
[12] walked in with the chairs, and then right back out
[13] and got the table, and came right back in with the
[14] table.
[15] As far as the doors were open, okay, the
[16] only door that was closed, okay, was the outside
[17] door that led to the outside of the house. That's
[18] where we were working at. So we brought the chairs
[19] in, walked right back out, got the table. We were
[20] carrying the table in, we were setting the table --
[21] matter of the fact the table was still in my hands,
[22] walking backward to the steps that went down to the
[23] pool area. We were setting the table down, and
[24] then as -- the table didn't even hit the ground

[1] statement of what happened?
[2] A. Correct. I have not.
[3] Q. Have you been interviewed by any
[4] representative from any insurance company?
[5] A. When all this, I guess, all this happened.
[6] Q. I don't want to hear about anything you said
[7] with your lawyer.
[8] A. When all this happened I met with John Manger
[9] and we met at a restaurant up on 202 and Route 1
[10] with a couple of -- I don't even know where these
[11] attorneys were from. I don't know if they were --
[12] whose they were. They just wanted to know the
[13] incident, what happened.
[14] Q. None of the attorneys at this meeting with Mr.
[15] Manger were retained by you, correct?
[16] A. Absolutely not.
[17] Q. So they weren't your lawyers?
[18] A. No.
[19] Q. And did the lawyers say anything to you at the
[20] meeting?
[21] A. Just wanted to know what happened.
[22] Q. Were they taking notes?
[23] A. I believe they took a recording.
[24] Q. They took a recording. Okay.

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Vincent J. Riz
January 30, 20

Page 41

Page 4

[1] Where exactly did the meeting take place
[2] on 202?
[3] A. There was a little corner restaurant, a little
[4] shopping center. I don't know the name of the
[5] shopping center. It's right at where Route 1 and
[6] 202 meet. There's a little coffee shop inside
[7] there.
[8] Q. How long after the accident was this?
[9] A. Gosh, I'd say probably four or five months.
[10] Q. I presume Mr. Manger called you and asked you
[11] to come meet with him?
[12] A. That's correct.
[13] Q. Did you consult with an attorney before you
[14] went and spoke to them?
[15] A. No, sir.
[16] Q. Did any of the attorneys who were present
[17] advise you that you could bring an attorney with
[18] you or suggest that you have an attorney with you
[19] when they were talking to you?
[20] A. No, sir.
[21] Q. Do you remember --
[22] A. Not that I remember.
[23] Q. Do you remember the names of any of the
[24] attorneys who were there?

[1] A. No, sir.
[2] Q. About how long was it between when you spoke
[3] to Mrs. Longwell initially about her desire to have
[4] you fellows clean the chairs and the table and
[5] bring them into the pool area and when the accident
[6] occurred?
[7] A. I'm sorry, Matt. You have to repeat the
[8] question.
[9] Q. About how long was it between when you first
[10] spoke to Mrs. Longwell about her interest in having
[11] you fellows do that work, to clean the chairs and
[12] the table?
[13] A. As soon as we got there, you mean when I was
[14] on the job site, when was my conversation with Mrs.
[15] Longwell?
[16] Q. Yes?
[17] A. I would say probably within half an hour or
[18] forty-five minutes from when I was present on the
[19] property.
[20] Q. About half an hour after you first spoke to
[21] Mrs. Longwell the accident occurred?
[22] A. No.
[23] Q. That's what I'm interested in knowing.
[24] A. Right. I --

Page 42

Page 44

[1] A. No. I don't. It was actually just one
[2] gentleman. That was it.
[3] Q. Do you know who he was?
[4] A. No, sir.
[5] Q. Have you seen him since that day?
[6] A. No.
[7] Q. If I told you his name, would you remember the
[8] name?
[9] A. No. The only way I would be able to find out
[10] for you is if I were to try to get a hold of Mr.
[11] Manger.
[12] Q. Was that attorney present at your earlier
[13] deposition about a year ago?
[14] A. No, sir.
[15] Q. Are you certain that it was recorded, the
[16] statement that you gave?
[17] A. Yes. I do remember them recording it.
[18] Q. Besides that, have you given any recorded
[19] statements to any person?
[20] A. No, sir.
[21] Q. Have you been interviewed, other than -- I'm
[22] not talking about your lawyer. Have you been
[23] interviewed by anybody about the facts and
[24] circumstances of the accident?

[1] Q. Let me finish, Mr. Rizzo.
[2] About how long was it between when you
[3] first spoke to her and when the accident occurred?
[4] A. Gosh, I'd say probably, an hour, I guess an
[5] hour and a half, two hours.
[6] Q. Did you do any work prior to cleaning off the
[7] chairs and the table?
[8] A. I don't understand the question.
[9] Q. She asked you to -- let me ask you this.
[10] When you got there that morning you
[11] weren't expecting to do the chairs and the table,
[12] correct?
[13] A. Positively not. My job consisted -- actually
[14] what my job was was to build this patio for her and
[15] Mr. Longwell.
[16] Q. But did you do any work on the patio that day
[17] prior to cleaning off the chairs and the table?
[18] A. Oh, yeah. Actually -- I don't know if I was
[19] cutting in edges or what I was doing. I was
[20] working on the patio. Absolutely.
[21] Q. That's when she came up and spoke to you?
[22] A. Correct.
[23] Q. Using these photographs can you point out to
[24] me where the chairs and the table were before you

Vincent J. Rizzo
January 30, 2006

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Page 45

Page 47

(1) started cleaning them?
(2) A. These photographs aren't going to show it too
(3) good, but I can explain it to you.
(4) The actual -- if I recall correctly, the
(5) actual table was right about here. Right in this
(6) area (indicating.)
(7) Q. Let me make a record of what you're talking
(8) about. We're looking at GORB 27, photograph number
(9) 10, the photograph on the lower half of the page,
(10) and the witness is now going to describe, at least
(11) as I understand, generally speaking, where he
(12) thinks the table was.
(13) A. That's where the table was. That's not where
(14) I started cleaning it. The table was brought out
(15) from here because there was actually brick dust on
(16) the table. The table was brought out from this
(17) area, and it was brought over to here so I could
(18) reach it with a hose.
(19) Q. There was brick dust on the table from the
(20) patio work that you had been doing?
(21) A. Right. I mean there was brick dust,
(22) settlement from the trees. The table was dirty.
(23) It wasn't just all brick dust that was it on.
(24) Q. But there was brick dust on it?

(1) Q. In any event you brought everything to the "B"
(2) area to clean it --
(3) A. Right. I don't know --
(4) Q. Mr. Rizzo, I'm trying to be polite to you.
(5) You've got to let me finish the question. Okay.
(6) Because we're not going to be able to read this,
(7) and I know you're anxious, and you know what I'm
(8) going to ask you, and you could tell me right away,
(9) but try and bear with me.
(10) Let me ask my question and then you give
(11) the answer. Okay.
(12) The "B" area is the location to which
(13) you brought the table and the chairs?
(14) A. Correct.
(15) Q. What type of table was it?
(16) A. A plastic -- I believe a plastic table.
(17) Q. What kind of chairs?
(18) A. Just regular plastic chairs.
(19) Q. Had they been in the patio area since you
(20) fellows had started doing the work putting pavers
(21) on the patio?
(22) A. Gosh, Matt, I can't remember that. I don't
(23) know. Because in that area -- I had to cover that
(24) area with pavers also. The table could have been

Page 46

Page 48

(1) A. There was -- I mean dust. There was dust from
(2) the -- there was dust from the work I was doing,
(3) and there was berry marks on it from the trees that
(4) was coming down. The table was just dirty. It
(5) needed to be cleaned, regardless of whatever part
(6) of my stuff was, or whatever.
(7) From here the table was brought over to
(8) here. And this is where it was cleaned at.
(9) Q. Put a, if you would, sir, an A on this picture
(10) where the table and the chairs --
(11) A. I --
(12) Q. Wait a minute -- where they were before you
(13) moved them to clean them.
(14) A. (Witness complies.) I'm going to say right
(15) about there.
(16) Q. Put a B where they were when you cleaned them.
(17) A. (Witness complies.) Right there.
(18) Q. In the location where you've marked with an A,
(19) is that where both the table and the chairs were?
(20) A. Everything was brought to that "B" area to be
(21) reached with the hose to be cleaned.
(22) Q. But the -- my question was is the "A" area
(23) where both the table and the chairs were?
(24) A. I can't remember, Matt.

(1) around there. It could have been moved a few
(2) times.
(3) Q. Tell me, if you can, sir, and I know it's been
(4) awhile, but tell me exactly what you remember Mrs.
(5) Longwell saying to you?
(6) A. She was having a party that weekend. Okay.
(7) She asked me if I could clean this table for her,
(8) and set it down where she pointed out to have the
(9) table set up at. And I said, Mrs. Longwell, it
(10) would be no problem. I said I would take care of
(11) it for her.
(12) Q. Tell me if I'm correct, my understanding of
(13) the layout of this place is that once you -- by the
(14) way, did Mr. Ortiz clean the tables and chairs with
(15) you?
(16) A. Yes. We cleaned the tables -- yes. In fact,
(17) he was doing -- in fact, he was cleaning the table,
(18) a lot of it, too.
(19) Q. What I'm wondering about, did he do it, or did
(20) you do it, or did you both do it?
(21) A. We both did it.
(22) Q. All right. My understanding of this layout is
(23) that after the table and the chairs are cleaned,
(24) you bring them in this door; am I correct?

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Vincent J. Ri
January 30, 21

Page 49

Page

[1] A. Correct. From the outside going into the
[2] house.
[3] Q. And there are two sliding glass doors between
[4] where the tables and the chairs were when you were
[5] cleaning them and the pool area, correct?
[6] A. There was a sliding glass door from the
[7] outside that enters the house, and apparently
[8] there's a glass door that enters into the house to
[9] the pool area, from inside of the house.
[10] Q. But you would have to go through, after you
[11] cleaned the table and chairs, you would have to
[12] walk through a glide sliding glass door that goes
[13] from the patio into the house, correct so far?
[14] A. That's correct.
[15] Q. And then you have to make a left into the
[16] pool, correct?
[17] A. Correct.
[18] Q. And you would have to walk through a second
[19] sliding glass door to get into the actual area
[20] where the pool is?
[21] A. Correct.
[22] Q. How many chairs were there?
[23] A. I believe there was three, three or four
[24] chairs if I remember correct. I'm not real sure

[1] I'm expecting what you're telling me, Matt, there's
[2] another door here off to the left-hand side that
[3] enters down -- this is inside the house -- that
[4] enters down into the pool area.

[5] If that's the door you're asking, yes,
[6] that is another door that enters down into the pool
[7] area.

[8] MR. CASEY: Rizzo-6 is GORB 15.
[9] (Whereupon Exhibit Rizzo-6 was marked
[10] for identification.)

[11] BY MR. CASEY:
[12] Q. Does this photograph, number 14, on the lower
[13] half of this page, is that the table that you
[14] cleaned?

[15] A. Yeah. That looks like it. That does look
[16] like the table, if I remember correctly. It's been
[17] awhile.

[18] Q. Is that photo taken through the door which is
[19] the second of the two doors through which you would
[20] have to go to put the chairs and the table in the
[21] pool room?

[22] A. Yes. This door is the one that is inside of
[23] the house. Okay. There are steps right here, and
[24] this is the pool area down here.

Page 50

Page 52

[1] on -- as far as on the chairs. I know there was no
[2] more than four. If anything, there may have been
[3] less.
[4] Q. Using another photograph which I'll mark as --
[5] by the way, the last photograph, the page on which
[6] it appears will be marked as Rizzo-4, and I'll mark
[7] as Rizzo-5 GORB 28.
[8] (Whereupon Exhibits Rizzo-4 and Rizzo-5
[9] were marked for identification.)
[10] BY MR. CASEY:
[11] Q. The lower half of this page has another
[12] photograph, sir, and in the numbering of these
[13] photographs there's handwritten numbers on these
[14] pages, and it's photograph number 12.
[15] Is this the sliding glass door between
[16] the patio and the house through which you would
[17] have to go after you cleaned the chairs and the
[18] table, this one?
[19] A. I need to take a look at it.
[20] Q. Sure.
[21] A. This is the door outside of the house. Okay.
[22] This is the area where I was working out, out here
[23] in this paver area.
[24] If you're looking through this door, as

[1] Q. Describe the room that appears just off the
[2] patio before you get into the pool room?

[3] A. The room that is off the patio?

[4] Q. Yes.

[5] A. I would probably have to say it's, I guess,
[6] like a dining area.

[7] Q. Just draw an arrow to the table, if you would,
[8] Mr. Rizzo.

[9] A. (Witness complies.)

[10] MR. CASEY: Rizzo-7 is GORB 19.
[11] (Whereupon Exhibit Rizzo-7 was marked
[12] for identification.)

[13] BY MR. CASEY:

[14] Q. Take a look at these photographs, Mr. Rizzo.
[15] They show different vantage points -- I should say
[16] different perspectives, but I believe they show
[17] some chairs and the table to which you referred in
[18] another photograph. Am I correct about that?

[19] A. Repeat the question, Matt.

[20] Q. Do these photographs in Rizzo-7 depict the
[21] chairs and the table that you cleaned?

[22] A. The table -- that is the table I cleaned, from
[23] what I can see. The chairs -- this might have been
[24] one of them there, too.

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Vincent J. Riz
January 30, 20

Page 57

Page 57

(1) just want to make sure I understand you correctly,
(2) the chairs that are depicted in the photograph on
(3) the top half of this page, and I'm going to circle
(4) them, do you believe that any of those chairs was
(5) cleaned by you and brought into the room?
(6) **A.** No. There wasn't no chairs like this. This
(7) may have been one of them right here. The slatted
(8) chairs -- they were not slatted.
(9) (Whereupon Exhibit Rizzo-9 was marked
(10) for identification.)
(11) **BY MR. CASEY:**
(12) **Q.** So the three chairs to the right of this
(13) photograph were already in the pool room --
(14) **A.** Right.
(15) **Q.** -- and were not included among the chairs that
(16) you cleaned --
(17) **A.** Correct.
(18) **Q.** -- on the patio and brought into the poolroom?
(19) **A.** Correct.
(20) **Q.** But the chair to the left, which I'll mark
(21) with an arrow, on Rizzo-9, police photograph number
(22) 7, is a chair that you cleaned and brought into the
(23) room?
(24) **A.** Uh-uh.

(1) **Q.** That's a slatted chair.
(2) **A.** Then it's not me then.
(3) **Q.** How about this chair to the right?
(4) **A.** Let me see that one.
(5) I can't remember. I can't remember. I
(6) know they would have been brought in at one shot.
(7) **Q.** Can you put a number on the number of chairs
(8) that were on the patio that you had to clean and
(9) bring into the pool room?
(10) **MR. LANDON:** Objection. Asked and
(11) answered.
(12) **THE WITNESS:** What I already said about
(13) it, two, three, maybe four, if that.
(14) **BY MR. CASEY:**
(15) **Q.** Two to three, maybe four, if that?
(16) **A.** If that, yes.
(17) **Q.** Who carried the chairs in from the patio into
(18) the pool room?
(19) **A.** It would have been Salvador and myself.
(20) **Q.** Do you believe you carried chairs individually
(21) or did you assist one another carrying an
(22) individual chair?
(23) **A.** No. We carried the chairs in separately.
(24) **Q.** How long was it between when you finished

Page 58

Page 60

(1) **Q.** Yes?
(2) **A.** I would believe so. I mean, if I can remember
(3) correctly on the chairs.
(4) **Q.** Going back to Rizzo-8, police photograph
(5) number 23, I'm going to circle other chairs going
(6) from left to right, at least as I can see them in
(7) this photograph. There are four chairs; am I
(8) right, 1, 2, 3, 4?
(9) **A.** Uh-uh.
(10) **Q.** Yes? You need to answer verbally.
(11) **A.** Yes.
(12) **Q.** Do you believe that any of those four chairs
(13) was among those that you cleaned on the patio and
(14) brought into the poolroom?
(15) **A.** Let me see, Matt. The only ones I remember
(16) was on this side. These chairs were there. Them
(17) chairs were there.
(18) **Q.** Which ones?
(19) **A.** Right there. The ones you circled.
(20) **Q.** So, 1, 2, 3, 4, they were all there?
(21) **A.** The one closest to the table on the other
(22) side, over there --
(23) **Q.** Over here?
(24) **A.** Right. That may have been one I brought in.

(1) cleaning the chairs and the table and when the
(2) accident occurred, when you first observed the
(3) child in the pool, how much time elapsed?
(4) **A.** Gosh, there was none at all. Gosh, seconds.
(5) I mean by the time I got -- by the time I walked
(6) that table in, okay -- when that stuff was cleaned,
(7) it was walked into the house. Okay.
(8) As soon as -- as soon as the chairs were
(9) set, if that was the case, if the chairs were set
(10) in first or not, I can't quite remember, but I know
(11) I had the table in my hand, setting the table down,
(12) is when I looked up and I heard Rochelle screaming.
(13) **Q.** Did you do anything between the time that the
(14) table and the chairs were cleaned, when you had
(15) finished cleaning, and when you brought them into
(16) the house?
(17) **A.** I don't understand the question.
(18) **Q.** Did you, for example, take a break or do
(19) anything, make a phone call; between the time that
(20) you finished cleaning the chairs and the table and
(21) when you noticed the child in the pool?
(22) **A.** I still don't understand the question.
(23) **Q.** Let's use a hypothetical. You and I are
(24) cleaning the chairs and the table. Are you with

Vincent J. Rizzo
January 30, 2006

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Page 77

Page 79

(1) A. It's not just a pool. It's any hazard in
(2) construction, whether there may be a piece of brick
(3) laying down, maybe a cord that someone can trip
(4) over. It could be anything. It's not just the
(5) pool area.
(6) Q. I understand that, but you told me that when
(7) you left that area every night there were borders
(8) and caution tape and things like that specifically
(9) for safety put up around the pool, correct?
(10) A. On the outside of it. When I was doing that
(11) area on the outside.
(12) Q. That's what I'm saying. When you were doing
(13) that area, you did those things specifically for
(14) safety, correct?
(15) A. Uh-uh.
(16) Q. Yes?
(17) A. Yes. That's correct.
(18) Q. What training did you get at Astra-Zeneca to
(19) which you alluded to a minute ago?
(20) A. As far as?
(21) Q. Safety training. You said it. I'm just
(22) trying to figure out what you mean.
(23) A. Through OSHA, guidelines of safety up there.
(24) Through meetings. It's all they pump into you,

(1) Q. Along those very same lines, sir, if you
(2) brought the chairs in first and put them down
(3) around the pool, and then went back out to get the
(4) table, you had to make sure the doors were closed
(5) before you went back out, correct?
(6) MR. LANDON: Objection.
(7) THE WITNESS: No. No. That's not what
(8) it was.
(9) BY MR. CASEY:
(10) Q. So you believe you could be safe and leave the
(11) doors open?
(12) A. I'm saying --
(13) MR. LANDON: Objection.
(14) BY MR. CASEY:
(15) Q. Here's my question.
(16) Do you believe it would be consistent
(17) with the safety training you had to put the chairs
(18) down and go back out and get the table and leave
(19) the doors open?
(20) A. If I was going --
(21) MR. LANDON: Objection.
(22) THE WITNESS: If I was going to leave
(23) the job for 15, 20, 5 minutes, whatever,
(24) that would be a different story. That table

Page 78

Page 80

(1) safety.
(2) Q. What did you do for Astra-Zeneca?
(3) A. Masonry. Pretty much all their masonry work,
(4) pretty much.
(5) Q. I'm just trying to get a handle on what you
(6) alluded to earlier when you said, I worked at
(7) Astra-Zeneca for 20 years and that's all they
(8) focused on. They were very safety conscious?
(9) A. I guess how to answer that question, they
(10) focus on safety. I'm trained on safety an awful
(11) lot.
(12) The incident when it happened at this
(13) ordeal in this residence at this time in this
(14) manner is very terrible, what has happened. Okay.
(15) But my issue was not on the inside of the house.
(16) My job was maintained outside.
(17) Now if there was an issue as far as my
(18) outside work and something happened, I can be
(19) liable or account for the argument of it, but as
(20) far as what went on inside of that house, I'm
(21) not -- I'm not -- I'm not the owner of the house.
(22) I'm not the one who closed the doors. I'm not the
(23) one that opened up the door or anything of that
(24) nature.

(1) was right there with the chairs. There was
(2) no matter of elapsing 30 seconds for me to
(3) walk back out that door, grab that table,
(4) and walk right back in through that next
(5) door and drop that table down.
(6) BY MR. CASEY:
(7) Q. I believe your answer is no, you don't believe
(8) you needed to close the doors; is that what you're
(9) saying?
(10) MR. LANDON: Objection.
(11) BY MR. CASEY:
(12) Q. Between the time that you put the chairs down
(13) and go to get the table?
(14) A. The door was not closed.
(15) Q. Sir. Just presume for me, because I think we
(16) have photographs of this -- we have police
(17) photographs. The chairs that you cleaned were
(18) already there, correct? You had already put them
(19) down. Can we at least agree on that?
(20) A. No. Because as far as on the chair end of it,
(21) there was not -- there was not a time distance with
(22) these chairs. Like I said, everything was cleaned
(23) at one shot and brought into that house at one
(24) time.

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Vincent J. Ri
January 30, 21

Page 81

Page

[1] Q. We've already established that you would have
[2] to put -- if you put the chairs in first, you have
[3] to put them down in the pool room and go back
[4] outside to get the table?
[5] A. I was right there at the slider door.
[6] Q. Just bear with me. You'd have to put the
[7] chairs down and go back outside and get the table,
[8] correct?
[9] A. Correct.
[10] Q. When you came through the doors to put the
[11] chairs down, the door to the -- the two doors
[12] leading into the pool area are open, correct?
[13] A. But the door's right there where I was putting
[14] the table in.
[15] Q. Correct?
[16] A. Correct.
[17] Q. And then you have to go back outside through
[18] those doors to get the table, correct?
[19] A. Correct.
[20] Q. My question was, according to the safety
[21] training that you had, isn't it so that you would
[22] have to close those doors to go back out and get
[23] the table before you brought it back in?
[24] MR. LONDON: Objection.

[1] the chairs, whatever it may have been, she asked me
[2] to set it down in this one area for her, and that's
[3] the way it was done.
[4] Q. But you told me earlier that if you were
[5] leaving the area unguarded for a period of time, it
[6] would be incumbent upon you, I'm paraphrasing -- I
[7] want you to tell me if I'm right or wrong -- it
[8] would be incumbent upon you to make sure each of
[9] those doors was closed, correct?
[10] MR. LONDON: Objection.
[11] THE WITNESS: Do you object to this
[12] Roger?
[13] MR. LONDON: You have to answer the
[14] question.
[15] THE WITNESS: Here's what it is --
[16] BY MR. CASEY:
[17] Q. Let me just instruct you now. I'm asking you
[18] a specific question. I know you'd like --
[19] A. I --
[20] Q. Hold on a second, sir. I've tried to be very
[21] patient with you. I'm going to ask you a specific
[22] question. I want you to answer my question. You
[23] can have plenty of time to explain other things.
[24] Here's my question.

Page 82

Page 84

[1] THE WITNESS: If I was leaving that area
[2] unguarded for a period of time.
[3] BY MR. CASEY:
[4] Q. So you agree with me that if you were leaving
[5] that area unguarded for a period of time --
[6] A. A period of time.
[7] Q. Okay. Let me get there.
[8] If you were leaving that area unguarded
[9] for a period of time, you would be obliged to close
[10] each of the doors?
[11] A. My -- here we go again with this. My work
[12] consisted of outside. That door I close from the
[13] outside work area where I was working at is the
[14] door that I'm responsible for.
[15] That door was open inside that house.
[16] That table was clean by that door. The chairs were
[17] clean by the door, and when that stuff was brought
[18] in, it was brought in at one time.
[19] I have no business in Mr. and Mrs.
[20] Longwell's house or to help myself to go through
[21] any door that I please to. That's not what it was.
[22] Mrs. Longwell asked me to clean the
[23] table for her. That's what was done.
[24] When I was done cleaning the table and

[1] You told me earlier that if that area
[2] was left unguarded for a certain period of time,
[3] you would have to close the doors, correct?
[4] A. I'm telling you this, if I walked in that
[5] house, and I opened up that door, okay, then, yes
[6] it's my responsibility to close it. But I did not
[7] open that door.
[8] The only door I opened was from the
[9] outside of that house, walking into that house.
[10] I don't know why she wanted that door
[11] opened. There could have been a reason why she
[12] wanted it open, but I know if I opened that door
[13] physically myself, yes, then it would have been my
[14] option to close it.
[15] Q. So if you opened the inside door --
[16] A. Correct.
[17] Q. -- then your failure to close it in between
[18] when you did the work and when the accident
[19] happened would be your fault?
[20] MR. LONDON: Objection.
[21] THE WITNESS: Say -- repeat that.
[22] BY MR. CASEY:
[23] Q. If you opened the inside door, if it was you
[24] rather than someone in the house, okay, are you

Vincent J. Rizzo
January 30, 2006

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Page 85

Page 87

(1) with me so far?
(2) A. Correct.
(3) Q. Then it would be your responsibility to close
(4) it, correct?
(5) A. If -- if it was said to me to close it.
(6) That's not what this ordeal was, though.
(7) Q. My question is, sir, if --
(8) A. Now --
(9) Q. Wait a minute. If you opened the door into
(10) the pool and brought the chairs in, and then went
(11) back outside to get the table, in order to be
(12) performing that work in a safe manner, it would be
(13) your job to close that door that goes into the
(14) pool, correct?
(15) MR. LONDON: Objection.
(16) THE WITNESS: No. Because that door was
(17) open. I don't know why -- that's the
(18) homeowner having the door open.
(19) BY MR. CASEY:
(20) Q. My question though was, if you opened the door
(21) to bring the chairs into the pool area, sir, if you
(22) opened the door, and put the chairs down, and then
(23) had to go back out to get the table, if that's what
(24) happened, it would be your job after putting the

(1) MR. LONDON: Objection. Objection.
(2) Hold it. Hold it. We're just going on and
(3) on and on.
(4) THE WITNESS: I'm not going to answer
(5) these questions.
(6) MR. LONDON: You're arguing with the
(7) witness about issues that involve legal
(8) conclusions for one thing.
(9) For two things they involve
(10) hypotheticals which we have no foundation
(11) for given the testimony that he's given.
(12) And, you know, I don't know if this is --
(13) you're wasting our time. I'd like you to
(14) move on beyond this point.
(15) MR. CASEY: I understand what you're
(16) saying. I disagree with it, but I tried to
(17) get specific answers from the witness and I
(18) haven't been able to do it.
(19) He's told me things that are his
(20) responsibility according to the safety
(21) training that he had. There were gratuitous
(22) things said that I think are areas that I
(23) can now explore. I think that his answers
(24) will speak for themselves.

Page 86

Page 88

(1) chairs down and going out onto the patio, to close
(2) that door to the pool before you go get the table,
(3) correct?
(4) MR. LONDON: Objection.
(5) THE WITNESS: I mean --
(6) BY MR. CASEY:
(7) Q. Agreed, yes or no?
(8) A. No. It's not agreed totally to the whole
(9) matter of it.
(10) Q. So that's not your job?
(11) A. Absolutely not.
(12) Q. If you were leaving that area, that is the
(13) pool area, and the dining room and the patio
(14) unguarded for a period of time, would it be your
(15) job to make sure that those doors are closed after
(16) you worked in that area?
(17) MR. LONDON: Objection.
(18) THE WITNESS: I mean -- I mean I'm
(19) responsible for my work area. That's what
(20) I'm responsible for.
(21) BY MR. CASEY:
(22) Q. Your work area that morning, sir, included the
(23) pool area, correct?
(24) A. No. No. My work area that day --

(1) BY MR. CASEY:
(2) Q. How do you know that Mr. Ortiz did not open
(3) the interior door?
(4) A. Because he was with me the whole time. He
(5) wouldn't have no business in the lady's house.
(6) Q. You don't even remember if he brought chairs
(7) in or not?
(8) A. My eyes were on him the whole time. He's my
(9) helper.
(10) Q. How do you know that he wasn't bringing in the
(11) chairs --
(12) A. Because --
(13) MR. CASEY: Roger, please ask him to do
(14) it. I've asked him like six times now.
(15) Please let me finish my question. Okay.
(16) BY MR. CASEY:
(17) Q. How do you know that Mr. Ortiz didn't take it
(18) upon himself to bring the chairs into the pool
(19) room, and, accordingly, that he opened the interior
(20) door; how do you know that?
(21) A. Because I'm his boss, and I would tell him
(22) what he's to do. He would not take it upon himself
(23) to do something that I have not asked him to do.
(24) Q. Have you talked to him about this accident?

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Vincent J. I
January 30,

Page 89

Page

- [1] A. No, sir. I have not.
[2] Q. Have you had any conversations with him about
[3] it?
[4] A. Not at all.
[5] Q. Do you know whether he's provided any
[6] statements to any person about the accident?
[7] A. The only one I recall is just the cop that was
[8] there that day the incident happened.
[9] Q. One more exhibit, GORB 11.
[10] (Whereupon Exhibit Rizzo-10 was marked
[11] for identification.)
[12] **BY MR. CASEY:**
[13] Q. Does that show the patio?
[14] A. Yes. This shows the patio. This is before
[15] this work was already started to be done. That's
[16] existing.
[17] Q. Before what?
[18] A. Before the work was to be done.
[19] Q. When you were bringing the furniture in from
[20] the patio into the pool room, were there steps
[21] going in?
[22] A. No.
[23] Q. Going into the house?
[24] A. No. The steps weren't there at that time.

- [1] Q. How long did that job take?
[2] A. I'd say probably about a week, week and a
[3] half, right in that area.
[4] Q. You might have started that in August also?
[5] A. Yes.
[6] Q. And during the time period that you were doing
[7] the knee-high retaining wall job, did you see
[8] Rochelle Fishman living there?
[9] A. I mean I saw her truck there a few times. I
[10] didn't know all this incident was going on with her
[11] and her husband and the whole mess of it.
[12] As far as to answer your question,
[13] Dan, I saw the truck there a couple times.
[14] Q. Did you see her children in the house during
[15] that week you were doing the knee-high wall?
[16] A. I don't even recall. I don't even recall.
[17] Q. Did you know her children at that time, when
[18] you were doing the knee-high wall?
[19] A. I mean I didn't know them by name. I just
[20] knew that they were her children.
[21] Q. Did you know the difference between Alexandra,
[22] Samuel and Marissa?
[23] A. I mean by you telling me the names right now
[24] that's going to reflect one is a boy and one is a

Page 90

Page 92

- [1] Q. So you had already cleared the steps out?
[2] A. That's right.
[3] Q. Did you have to step up?
[4] A. No. It came level right off the patio.
[5] Q. You had already done that?
[6] A. Uh-uh.
[7] Q. You need to say yes or no.
[8] A. Yes.
[9] Q. Did you have to unlock any of the doors before
[10] you carried the furniture into the pool room?
[11] A. No. The doors were unlocked.
[12] **MR. CASEY:** I believe for the moment
[13] those are all the questions I have.
[14] **BY MR. HART:**
[15] Q. Mr. Rizzo, good morning, my name is Dan Hart.
[16] We met before at your last deposition.
[17] A. Yes.
[18] Q. I'd like to try to see if I can get a little
[19] handle on some of the frame.
[20] When you were doing the knee-high wall,
[21] the retaining wall around the patio area, that was
[22] completed two weeks before this incident?
[23] A. Prior -- two to three weeks before that job
[24] was completely done.

- [1] girl.
[2] Q. I know after the incident you know that
[3] Marissa was the little girl who was in the pool?
[4] A. After what I just heard.
[5] Q. When you started the project for the pavers
[6] for the patio, again I'm trying to figure out, how
[7] many days before this incident had you started that
[8] job?
[9] A. As far as the pavers?
[10] Q. Yes.
[11] A. You mean before -- how many days before this
[12] happened?
[13] Q. Yes.
[14] A. I would say probably close to -- I would say
[15] probably about a week.
[16] Q. Now this incident happened on Friday, August
[17] 30 of 2002. Did you work at that site that
[18] Thursday, Wednesday, Tuesday, and Monday?
[19] A. I'm sure -- yes. I'm sure I did. Yes.
[20] Q. During that time period did you see children
[21] in the house?
[22] A. No. I mean I didn't really look inside the
[23] house all the time, what was going on.
[24] Occasionally if I was up doing my work, if I

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Vincent J. R
January 30, 2

Page 97

Page

(1) time?
(2) A. Yes. Mrs. Longwell and I both walked down the
(3) steps into the pool area.
(4) Q. And where was Mr. Ortiz during that?
(5) A. Outside.
(6) Q. He did not come in that time?
(7) A. No, sir.
(8) Q. After she showed you where she wanted you to
(9) place the table and chairs, who left the pool area
(10) first?
(11) A. Mrs. Longwell walked out, and I was in front
(12) of Mrs. Longwell -- I'm sorry. I was in back of
(13) Mrs. Longwell. She opened the door for me to go
(14) out. I walked out of the house. She closed the
(15) door, and that was it.
(16) Q. The pool area door, when you -- she walked out
(17) first, and opened the door to what, from the pool
(18) into the dining area?
(19) A. No, sir. From the dining room out to the
(20) outside patio area.
(21) Q. She let you out basically?
(22) A. Yes.
(23) Q. And you stepped out?
(24) A. Absolutely.

(1) like that.
(2) Q. And you used Ajax?
(3) A. I believe it was Ajax.
(4) Q. Where did you get the Ajax?
(5) A. She stuck it outside. It was already outside.
(6) Q. When did she stick it outside?
(7) A. Gosh, this is when I was in the conversation
(8) with her.
(9) Q. Then after you finished cleaning the tables
(10) and chairs, did you alert anyone inside the house
(11) that you were going to be bringing them in at that
(12) point?
(13) A. No, sir. Her specific words were when I'm
(14) done with it to bring it in and set it down.
(15) Q. When you opened the door between the patio
(16) area and the dining room area, was it locked?
(17) A. No. That door was open. That's the one she
(18) let me out of.
(19) Q. Was it open or was it unlocked?
(20) A. It was unlocked. It was a slider.
(21) Q. The first time you went in the house with Mrs.
(22) Longwell and then into the pool area, did you see
(23) children?
(24) A. No.

Page 98

Page 100

(1) Q. And did she close the door behind you?
(2) A. Yes. She did.
(3) Q. Then how much time elapsed between when you
(4) stepped back out to the patio area and when you
(5) began cleaning the table and chairs?
(6) A. I'd say roughly, probably about half an hour,
(7) forty-five minute before we started cleaning the
(8) table and chairs.
(9) Q. During that time period what were you doing?
(10) A. Well I was working on the outside, the paver
(11) area.
(12) Q. Then you began to clean the table and chairs.
(13) Had you spoken at all with Mrs. Longwell? Did she
(14) open the door and say, hey, guys, what's going on
(15) with the table and chairs; any conversation with
(16) anyone in the house?
(17) A. No. The conversation was what she asked me to
(18) do, when I had it done, she said just where I want
(19) it at, and put it in here when you're done with it
(20) because we're having a party on the weekend.
(21) Q. After you cleaned the tables and chairs, and I
(22) think you said that took half an hour?
(23) A. Roughly about half an hour I would assume it
(24) took, half an hour, forty-five minute, something

(1) Q. Did you hear any children?
(2) A. No.
(3) Q. Did you see any adults other than Mrs.
(4) Longwell?
(5) A. No. I didn't. Mrs. Longwell was the only
(6) conversation I had.
(7) Q. And then the brief period when you stepped
(8) back out of the pool area to go back out to the
(9) patio area, again briefly into the dining area, did
(10) you see any children at that time?
(11) A. No, sir.
(12) Q. Did you hear any adults?
(13) A. No.
(14) Q. From the time period that, the approximate
(15) area when you went back out of the house, did a
(16) half hour of work, approximately a half hour to
(17) clean the table and chairs, did you see or hear any
(18) children?
(19) A. No, sir.
(20) Q. When you -- I think Mr. Casey was trying to
(21) get to this -- it's your recollection that when you
(22) brought the table and chairs in, the door between
(23) the dining room and the pool, the slider between
(24) the dining room and the pool was open?

Vincent J. Rizzo
January 30, 2006

Estate of Marissa Rose Fishman v.
Richard Longwell, et/al

Page 101

Page 103

(1) A. Correct.
(2) Q. I think you said you knew that because if you
(3) were holding two chairs, you don't recall having to
(4) put them down to get out to the pool area?
(5) A. Correct.
(6) Q. Would it refresh your recollection as to
(7) whether you brought the chairs in first or the
(8) table first?
(9) A. It would have to be chairs, I would have to
(10) assume.
(11) Q. I don't want you to assume anything.
(12) A. Right. I mean I would have to say so.
(13) Q. At that point when you were carrying the
(14) chairs, did you see any children?
(15) A. No, sir.
(16) Q. Did you hear any children?
(17) A. No, sir.
(18) Q. Did you hear anybody calling anyone's name?
(19) A. No. No, sir.
(20) Q. When you put the chairs down in the pool area,
(21) did you see the child in the pool?
(22) A. No, sir. I mean I wasn't even -- I was
(23) putting the chairs down, walked right back out and
(24) grabbed the table, walked right back in.

(1) A. No, sir.
(2) Q. It was when you were about to place the table
(3) down that you first became aware that there was
(4) some sort of problem?
(5) A. I looked up and I saw -- I wondered what she
(6) was screaming about.
(7) Q. Did you see any children in the area?
(8) A. No, sir.
(9) Q. Miss Fishman was inside the dining area when
(10) you heard her scream, correct?
(11) A. Correct.
(12) Q. When she screamed, did you know what was
(13) wrong?
(14) A. No. Not until I -- not until after I seen her
(15) run down to the pool and grab the child.
(16) Q. Did she have to push you to get to the pool?
(17) A. No. I was on the other side of the table.
(18) Q. Do you remember if she had to --
(19) A. I don't remember. I don't believe she did.
(20) Q. Do you remember if she had to push Mr. Ortiz
(21) out of the way to get to the pool?
(22) A. I don't remember that.
(23) Q. Were you in the pool area the entire time she
(24) pulled the child out of the pool and took her from

Page 102

Page 104

(1) It was no more than at the most a 40
(2) second, 30 second ordeal.
(3) Q. I'm asking for your recollection at the time
(4) you brought the chairs in -- let me ask you, did
(5) you carry all three chairs in?
(6) A. If I -- they were plastic chairs, if I
(7) remember correctly, and they were light chairs.
(8) You could put two of them -- just carry two of them
(9) in.
(10) Q. When you went back, let's say you went back
(11) out and brought the table in, and Mr. Ortiz helped
(12) you with the table; is that correct?
(13) A. That's correct.
(14) Q. And while you were entering the pool area to
(15) put the table down, did you see the child in the
(16) pool?
(17) A. No, sir.
(18) Q. That trip, when you're taking the table in
(19) through the house, did you see any children at all?
(20) A. No, sir.
(21) Q. Did you see any adults at all?
(22) A. No, sir.
(23) Q. Did you hear anybody screaming or calling for
(24) any child?

(1) the pool area into the dining area?
(2) A. Yes. This happened within seconds. So I mean
(3) it was...
(4) Q. Did anyone, other than Miss Fishman, jump in
(5) the pool to help the child?
(6) A. No.
(7) Q. Did anyone else come from the house out into
(8) the pool area, other than Miss Fishman, while you
(9) were standing there?
(10) A. Not that I remember. I mean I can't remember.
(11) I know Mrs. Longwell came out, and, you know, but I
(12) mean that's -- I don't remember. No to answer your
(13) question.
(14) Q. At that point after the child was out of the
(15) pool area in the dining area, you and Mr. Ortiz
(16) just simply walked back into the dining area and
(17) then out the sliders to the patio; is that correct?
(18) A. Yes. That's correct.
(19) Q. Earlier in your testimony you said you did see
(20) children in the kitchen area. Do you remember when
(21) you saw children in the kitchen area that day?
(22) A. That was as soon as I got there.
(23) Q. So that would have been between eight and
(24) eight-thirty?